



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of *the* Appeals of
HUNT FOODS AND INDUSTRIES, INC.,
et al.

Appearances:

For Appellants: Hilbert P. Zarky, Attorney at Law

For Respondent: A. Ben Jacobson, Associate Tax Counsel

O _ P _ I _ N _ I _ O _ N

These appeals are made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Hunt Foods and Industries, Inc., et al., against proposed assessments of additional franchise tax as follows:

<u>Appellant</u>	<u>Income Year</u> <u>E n d e d</u>	<u>A m o u n t</u>
Hunt Foods and Industries, Inc.	11/30/56	\$40,491.25
Hunt Foods Export Corporation	11/30/56	2 g g . 3 1

and pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying, the claims of Hunt Foods Industries, Inc., et al., for refund of franchise tax in the following amounts:

<u>Appellant</u>	<u>Income Year</u> <u>E n d e d</u>	<u>A m o u n t</u>
Hunt Foods and Industries, Inc.	11/30/56	\$17,580.34
United Can and Glass Company	11/30/56	11,007.38
Glass Containers Corporation		
(Taxable year ended 11-30-56)	11/30/56	9,100.30
(Taxable year ended 11-30-57)	11/30/56	9,281.38

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The amounts specified above are the amounts actually in dispute. Although appellants referred in their notice of appeal to adjustments for the income year ended November 30, 1955, the overall net deficiency determined by respondent for that year was less than that calculated by appellants, and no issue affecting the tax liability for that year has been raised. We conclude, therefore, that no appeal was intended with respect to that year.

Prior to 1957 appellant Hunt Foods and Industries, Inc., was known as The Ohio Match Company. Since May 14, 1956, it had been the owner of substantially all of the stock of Hunt Foods, Inc., which, in turn, owned the stock of a number of subsidiary corporations. In 1958 The Ohio Match Company, Hunt Foods, Inc., and several, affiliated, corporations were merged.

The only issue presented for decision by these appeals is whether Hunt Foods, Inc., and its subsidiaries were engaged in a unitary business with The Ohio Match Company during the period from June 1, 1956, through November 30, 1956.

Hunt Foods, Inc. (hereafter "Hunt Foods"), was a California corporation with its headquarters in Fullerton, California. It processed foods and sold its canned goods to wholesale and retail grocers. Hunt Foods owned all or substantially all of the stock of seven corporations, among which were the other appellants involved here. Four of the subsidiaries were engaged in food processing and canning activities similar to those of Hunt Foods; one of them exported Hunt Foods' products to other countries; and two of them manufactured glass and metal food containers, selling those containers both to Hunt Foods and to unrelated customers.

The Ohio Match Company (hereafter "Ohio Match") was a large manufacturer of matches, with its headquarters located in Ohio. It there produced wooden stick and paper book matches for retail sale under the name of "Ohio Blue Tip." It also sold paper matchbooks bearing advertising copy for distribution or resale by advertisers. Ohio Match owned substantial timberland in Idaho, where it operated a saw mill. Wooden blocks were shipped from the mill to the main plant in Ohio, for use in the manufacture of matches. Timber not suitable for match blocks was processed and sold as lumber.

On May 14, 1956, for the expressed purpose of achieving advantages flowing from increased size, integration of management and coordination of marketing efforts, the stockholders of Hunt Foods exchanged their stock for stock in Ohio Match. As a result of that transaction, Hunt Foods became an almost wholly owned subsidiary of Ohio Match.

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Shortly after the exchange, the principal officers of Hunt Foods became the principal officers of Ohio Match, and a majority of the directors of Hunt Foods became directors of Ohio Match.

Pursuant to a marketing agreement between Ohio Match and Hunt Foods, effective July 1, 1956, Ohio Match took charge of 'sales of Hunt Foods' products in most of the territory east of the Mississippi and a portion of the territory west of the Mississippi. Seventeen former Hunt Foods salesmen were transferred to the payroll of Ohio Match. Ohio Match purchased the canned goods from Hunt Foods at a slightly discounted price and resold them, together with its own matches, by means of direct selling activities. and through food brokers,

Hunt Foods also assigned its long term lease on a 'warehouse located in Illinois to Ohio Match. 'Twenty-four employees who worked at that warehouse were-transferred from the Hunt Foods' payroll to that of Ohio Match. Thereafter the Illinois warehouse was used by Ohio Match as a storage facility for both matches and canned goods.

In **turn**, Hunt Foods undertook the sale of matches in the areas of Los Angeles and San Francisco, and one former Ohio Match salesman was transferred to the Hunt Foods* payroll. The matches were purchased at a slightly discounted price from Ohio Match. They were then either resold by Hunt Foods salesmen, who were also selling canned goods, or were used by Hunt Foods for its own advertising and promotional purposes. Matches were stored by Hunt Foods in its **California** warehouses.

Between July 1, 1956, and November 30, 1956, Ohio Match purchased some \$16,240,000 worth of canned goods from Hunt Foods, and resold the majority of them. On November 30, 1956, Ohio Match had an unsold inventory of Hunt Foods' products valued at approximately \$3,500,000. The profit realized by Ohio Match on its sales of canned goods represented about 60 percent of its total profit for that portion of the year.

During the same period Hunt Foods' purchases of matches from Ohio Match totaled \$380,150, and its match sales amounted to \$158,848. It had an inventory of matches on hand on November 30; 1956, worth \$88,819. Some of the matches purchased by Hunt Foods were used for its own advertising and promotional purposes.

On May 14, 1956, Ohio Match's existing workmen's compensation policy was cancelled and, thereafter, employees of both Hunt Foods and Ohio Match were covered under a single policy. Before and after that date, both corporations used the same advertising agency. After May 1956, all advertising policies **were** under the joint direction of the personnel of

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both corporations. Subsequent to the affiliation of the two companies, Ohio Match made monthly accounting reports to Hunt Foods to enable interim consolidated reports to be prepared. Ohio Match, which had formerly reported its income on a calendar year basis, changed to a fiscal year ending November 30, so as to coincide with the taxable year of Hunt Foods.

Respondent's position is that during the period June 1, 1956, to November 30, 1956, the operations of Ohio Match were sufficiently separate from the operations of the Hunt Foods group that the income of Ohio Match should be computed and allocated separately for tax purposes. Appellants argue that during the period in question all of the corporations here involved, including Ohio Match, were engaged in a single unitary business and that their entire income should be combined and allocated within and without California by applying a single formula.

A review of existing decisions reveals a progressive broadening of the meaning and application of the unitary concept. In Butler Bros. v. McColgan, 17 Cal. 2d 664 [111 P.2d 334], aff'd 315 U.S. 501 [86 L. Ed. 991], which involved a single corporation engaged in a merchandising business with outlets in several states, the California Supreme Court determined that a unitary business was definitely established by the existence of (1) unity of ownership, (2) unity of operation evidenced by central purchasing, advertising, accounting and management, and (3) unity of use in the centralized executive force and general system of operation. Subsequently, in Edison California-Stores, Inc. v. McColgan, 30 Cal. 2d 472 [183 P.2d 16], the unitary concept was extended to include the operations of a parent corporation and its separately incorporated subsidiaries. The California Supreme Court there declared that a unitary enterprise exists when the operation of the portion of the business done within the state is dependent upon or contributes to the operation of the business without the state. These tests were recently reaffirmed and broadly interpreted in Superior Oil Co. v. Franchise Tax Board, 60 Cal. 2d 406 [34 Cal. Rptr. 545, 386 P.2d 33] and Honolulu Oil Corp. v. Franchise Tax Board, 60 Cal. 2d 417 [34 Cal. Rptr. 552, 386 P.2d 40].

The avowed purpose of the exchange of stock which resulted in the common ownership of Ohio Match and Hunt Foods was to achieve managerial and economic advantages not available to them as separate corporate entities. **Shortly after that exchange, interlocking directorates were formed, and officers common to both corporations were appointed.** -This centralized management made all major policy decisions for the two companies thereafter.

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Though Hunt Foods and Ohio Match manufactured different products, both were primarily engaged in the production of consumer goods sold mainly through the grocery trade. Because of this similarity in their respective markets, Hunt Foods and Ohio Match deemed it advisable to integrate their sales activities to a considerable extent. In connection with that decision, there was a transfer of experienced personnel between the two companies. Between July 1, 1956, and November 30, 1956, Ohio Match purchased some \$16 million worth of canned goods from Hunt Foods, at a price-exceeding Hunt's production costs. In turn, Ohio Match resold a large portion of those food products, realizing profit from such sales which represented 60 percent of its total profits for that period.

After their affiliation, Hunt Foods and Ohio Match shared warehouse space in Illinois and California, interim consolidated reports were made, and overall advertising policy was determined by the new joint management.

In order to establish the existence of a unitary business appellants need not, as argued by respondent, prove that the operations of Hunt Foods and the operations of Ohio Match were "necessary" or "essential" to the production or sale of each others' products. (Superior Oil Co. v. Franchise Tax Board, supra, 60 Cal. 2d 406 [34 Cal. Rptr. 545, 386 P.2d 33].) We believe that the facts of the instant case, viewed as a whole, indicate a degree of mutual dependency and contribution between Hunt Foods and Ohio Match in the latter half of the income year ended November 30, 1956, which is sufficient to sustain a finding that they were engaged in a unitary business during that period. That being so, apportionment of the total combined income by means of a single allocation formula is required, pursuant to the mandate of all of the cases which we have cited in this opinion.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of Hunt Foods and Industries, Inc., et al., against proposed assessments of additional franchise tax as follows, be and the same

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is hereby reversed:


<u>Appellant</u>	<u>Income Year Ended</u>	<u>Amount</u>
Hunt Foods and Industries, Inc.	11/30/56	\$40,491.25
Hunt Foods Export Corporation	11/30/56	299.31

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code that the action of the Franchise Tax Board in denying the claims of Hunt Foods and Industries, Inc., et al., for refund of franchise tax as follows, be and the same is hereby reversed:

<u>Appellant</u>	<u>Income Year</u> <u>E n d e d</u>	<u>Amount</u>
Hunt Foods and Industries, Inc.	11/30/56	\$17,580.34
United Can and Glass Company	11/30/56	11, 007.38
Glass Containers Corporation		
(Taxable year ended 11-30-56)	11/30/56	9,100.30
(Taxable year ended 11-30-57)	11/30/56	9,281.38

Done at Pasadena, California, this 5th day
of April, 1965, by the State Board of Equalization.

<u>John W. Lynch</u>	Chairman
<u>Boyd Reed</u>	Member
<u>James R. Latta</u>	Member
<u>Richard C. Horn</u>	Member
<u> </u>	Member

Attest  Secretary